

GARRET VLEIT.

[To accompany bill H. R. No. 38.]

FEBRUARY 29, 1840.

Mr. RUSSELL, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the petition of Garret Vleit, praying compensation for surveying done for the United States in the Territory of Wisconsin, in the years 1837 and 1838, make the following report:

At the 2d session of the 25th Congress this claim was referred, in the House of Representatives, to the Committee of Claims, and a favorable report made thereon; which the committee have annexed, and adopt as part of this report; and herewith report a bill for the petitioner's relief.

MAY 11, 1838.

The Committee of Claims, to whom was referred the claim of Garret Vleit, report:

That, by an act passed on the 2d of July, 1836, by Congress, the Surveyor General was directed to cause the towns of Fort Madison, Burlington, Belleview, Dubuque, Peru, and Mineral Point, in the Territory of Wisconsin, to be surveyed into town lots, squares, and streets. Three thousand dollars were appropriated to defray the expense. On the 15th of October, 1836, a contract was drawn, designed to be executed by Garret Vleit and George W. Harrison, of the one part, and the United States, by the Surveyor General, of the other part. The first party was to survey said towns into lots, streets, squares, avenues, and alleys, as required by the act of July 2d, 1836, and to make return of said surveys and plats, by the 1st of February thereafter, to the Surveyor General, (the act of God excepted,) under a penalty of five thousand dollars. The second party was to give a compensation, to be fixed by the Surveyor General.

The contract was signed by Garret Vleit, but not by George W. Harrison, who was in Wisconsin; and it was to be conveyed to him for execution, and then to be returned. Mr. Lytle executed the contract on behalf of the United States. Mr. Vleit executed a bond, with sureties, under a penalty of five thousand dollars, to perform the contract.

Mr. Vleit surveyed the town of Mineral Point, and, in part, the towns of Peru and Dubuque. Mr. Lytle, under date of March 24, 1837, informed

the Commissioner of the General Land Office that the survey had been arrested by the severity of the weather, and especially by the freezing of the ground, so as to prevent the driving of the stakes.

In a letter written by Mr. Vleit to M. T. Williams on the 18th of August, 1837, he says: "I have been bound under two contracts—the first, of October 15, 1836, in which contract G. W. Harrison was appointed with me; and as Harrison refused to act under the directions, I was obliged to return from the work and report what I had done, and informed the Surveyor General that I was willing to relinquish the survey; which was the latter part of December. The Surveyor General informed me that I could not withdraw from the contract."

In another part of the same letter he speaks of having been embarrassed in his first expedition by George W. Harrison, but he says nothing about being obliged to suspend the work on account of the severity of the weather.

In a report Mr. Vleit made to Mr. Lytle on the 26th of June, 1837, he mentions the ground was hard frozen before he left the survey, the fall before; but it is apparent, from the tenor of that report, that the reason why Mr. Vleit returned to Cincinnati was to arrange a division of the survey between him and Mr. Harrison, to obtain the approbation of Mr. Lytle to such division, and to obtain more time. There is no justification sought under the exception mentioned in the contract; and it is not pretended that the contract might not have been completed by the 1st of February, 1837, if Mr. Harrison had united in its execution.

On the 3d of March, 1837, Congress passed an act that assigned the duties required to be performed by the act of July 2, 1836, to a board of commissioners. The acts of the Surveyor General under the former law were confirmed and ratified up to the passage of the second act; from that date all his powers in relation to these surveys ceased.

On the 16th of March, 1836, Mr. Vleit contracted with Mr. Lytle, on the part of the United States, to survey said six towns, for the consideration of three thousand dollars, and to make return thereof by the 15th of July following. In this second contract no notice is taken of the first contract; it is drawn as an original contract, and not for the purpose of extending the time for completing an old one.

It is said (and there is no proof to the contrary) that when this second contract was made, neither Mr. Lytle nor Mr. Vleit knew that the act of March 3d had passed. It is a little extraordinary, however, that nothing should have been seen of the progress of that bill through both Houses of Congress, when the papers must have referred to it many times. Mr. Vleit adverts, in his letter to Mr. Williams, and in his report to Mr. Lytle, mentioned above, to the preparations he made during the winter previous to go on with the work in the spring, and of the refusal of Mr. Lytle to relieve him from completing the survey. Immediately after executing the contract, on the 16th of March, 1837, Mr. Vleit left Cincinnati, and recommenced the survey at Dubuque. Mr. Cariell, one of the commissioners appointed by the President, with the advice and consent of the Senate, under the act of March 3, 1837, was at Dubuque, and a conversation was held between him and Mr. Vleit as to the completion of the work. The parties do not agree as to what took place between them. Mr. Vleit contends he was dismissed from the work; while Mr. Cariell says Mr. Vleit wished to leave it, and only desired a certificate that would satisfy Mr. Lytle he had not forfeited his contract. To sustain his position, Mr. Vleit presents the following instrument of writing:

DUBUQUE, W. T., April 20, 1837.

All acts and duties required to be done and performed by the surveyor for the Territory of Wisconsin, under the act entitled "An act for laying off the towns of Fort Madison and Burlington, in the county of Des Moines; and the towns of Bellevue, Dubuque, and Peru, in the county of Dubuque; and Mineral Point, in the county of Iowa, Territory of Wisconsin, and for other purposes," approved July 2, 1836, are required to be done by a board of commissioners appointed by the President of the United States, under the provisions of an act to amend the beforementioned act, approved March 3, 1837. You are therefore requested to relinquish the survey of the aforementioned towns, as all orders and instructions from the surveyor's office at Cincinnati are rendered nugatory, and the authority of the Surveyor General of the Territory of Wisconsin superseded from the time of the approval of said act of Congress providing for the appointment of said commissioners.

WILLIAM W. CARIELL,
Commissioner.

To GARRET VLEIT, *Deputy Surveyor.*

The commissioners, in a communication made to the Commissioner of the General Land Office on the 21st of August, 1837, gave the following account of what took place between Mr. Cariell and Mr. Vleit, which led to the execution of the foregoing paper, discharging Mr. Vleit:

"In the beginning of April last, Mr. Vleit arrived at Dubuque, and commenced the survey of that town, under a contract which had been executed by him with the Surveyor General of Cincinnati, on the 16th of March, 1837, thirteen days subsequent to the passage of the act of Congress under which this commission was appointed. Mr. Cariell was the only commissioner at Dubuque at that time, and the board was not yet organized, the other two commissioners living at a distance of two hundred miles; it was therefore impossible that Mr. Vleit could have any conference with the board in reference to adopting the contracts of the Surveyor General with him, so that his acts would be legal. Mr. Vleit, in the mean time, repeatedly stated his reluctance to continue the survey, on the uncertainty of its being finally adopted, and his desire to give up the contract, as he had private business of much importance to attend to.

"He had given a bond to the Surveyor General for the performance of his contract; and if he should quit the ground, without an order from some one legally authorized to direct him to suspend his survey, he would not be entitled to any compensation for his surveys already performed. To obviate the difficulty, Mr. Cariell, in the name of the board of commissioners, gave him the written notice to suspend his operations, and in a day or two afterwards Mr. Vleit left Dubuque. In doing this, Mr. Cariell complied with the express desire of Mr. Vleit himself."

A long correspondence on the conflicting acts of the Surveyor General and the commissioners under the last act mentioned, (which was providently passed,) and in relation to the claim of Mr. Vleit, was carried on between the Commissioner of the General Land Office and Mr. Lytle, and between said Commissioner and the Secretary of the Treasury, and between said Commissioner and the commissioners appointed under the act of March 3, 1837. The Commissioner of the General Land Office was

solicitous that the second contract made with Mr. Vleit should be executed, so that justice should be done to him, and the United States thereby exonerated from all liability on account of damages, and from all charges of having acted in bad faith. The material part of this correspondence is before the committee, and is referred to.

By looking at the dates of the several communications, it will be found that his letters were written before the report of the commissioners of the 21st of August, 1837; he was unapprized, until the receipt of that report, that Mr. Vleit wished to be discharged from the contract, and that his dismissal was at his own instance and request. A disclosure of that fact, in the opinion of the committee, is important in deciding on the merits of this claim. In the opinion of the committee, although Mr. Lytle had no authority to make the contract on the 16th of March, yet, as he had possessed that authority, and was not apprized that it had been revoked, it would be unjust to consider the claim of Mr. Vleit as wholly unfounded, and to give him no compensation for his labor, nor any remuneration for his necessary expenses. He presented the following account:

Robert Lytle, Surveyor General, Cincinnati, Ohio, acting for and in behalf of the United States, to Garret Vleit, deputy surveyor, Dr.

By contract bearing date October 15, 1836: For surveying the towns of Fort Madison and Burlington, in the county of Des Moines; Bellevue, Dubuque, and Peru, in the county of Dubuque; and Mineral Point, in the county of Iowa, in the Territory of Wisconsin; and said contract renewed March 16th, 1837, amounting to				-	-	-	\$3,000 00
Received on the above contract				-	-	-	300 00
Balance remaining due, which I claim under said contract				-	-	-	\$2,700 00

GARRET VLEIT, Deputy Surveyor.

Mr. Lytle strongly recommends the payment of this account, on the ground that the United States failed to perform a valid obligation, and, having so failed, that the rule of damages is to pay the full consideration stipulated to be paid on the completion of the entire contract.

The committee dissent from this opinion, in both particulars. This case is not without strong mitigating circumstances on the part of the United States. If Mr. Vleit had performed his first contract, there would have been no controversy between the parties; he failed to do it, without any fault on the part of the United States, and incurred the penalty of five thousand dollars. It would be most manifestly unjust to give to him three thousand dollars, because an agent of the United States, without authority, had given him time to finish his work. Mr. Vleit is now liable on his bond, which was a part of his contract of the 15th October, 1836.

In the opinion of the committee, he should be paid for the work actually performed. If three thousand dollars was a reasonable compensation for the entire work to have been performed, that sum should be taken as data to estimate what he is entitled to for the proportion of the work he has performed. The committee endeavored to ascertain what proportion of the surveying he had executed; but the Commissioner of the General Land

Office was not able to give the information, nor was the Surveyor General, who was directed by the said Commissioner to report on that subject. The circumstances of Mr. Vleit require prompt action on the part of Congress, as he has incurred a debt in what surveying he has done, which presses upon him; and the committee propose to authorize the Commissioner of the General Land Office to decide the amount to which Mr. Vleit is entitled.

The committee being impressed with the belief that he desired to leave the work, they think he is not entitled to any remuneration of his expenses. If it should hereafter be made manifest by testimony that this impression is erroneous, that part of the case may be the subject of future investigation.

If he had not left the work so precipitately, but had waited until the board of commissioners had been organized, there is no reasonable ground to doubt that he would have been continued by the board of commissioners. This haste, under the circumstances, should not enure to his benefit, nor to the injury of the other party.

The committee herewith present a bill.

